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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/034,431
Filing Date: December 27, 2001
Appellant(s): MCKINNON ET AL.

Richard C. Bevins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 14, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Prior Art of Record

2002/0143876	Boyer et al.	10-2002
2002/0035605	McDowell et al.	03-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 11-22, 25-34, 37, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Boyer (U.S. 2002/143876).

As per claims 1-8, 11-22, 25-34, 37, and 38, Boyer teaches:

1. A method comprising:
 - a) receiving state information bearing on presence of a user, wherein receiving occurs at at least one presence detection system (paragraph 0032);
 - b) creating service logic based on the state information, the service logic created at the at least one presence detection system and configured to instruct an associated presence service to control communications associated with the user based on the presence of the user (0033-0038, 0041); and providing the service logic to the presence service (0032, 0041).

2. The method of claim 1 wherein the presence of the user relates to at least one of the group consisting of physical presence, availability, and status of the user or a device associated with the user (0032).
3. The method of claim 1 wherein the service logic is configured to instruct the presence service to register a first communication device associated with the user to receive communications when the state information is a first state (0036, 0038, 0041).
4. The method of claim 3 wherein the service logic is configured to instruct the presence service to register a second communication device associated with the user to receive communications when the state information is a second state (0041).
5. The method of claim 1 wherein the state information is provided to the associated presence service with the service logic (0170).
6. The method of claim 1 wherein the state information indicates whether a screen saver is active or inactive (0041).
7. The method of claim 1 wherein the state information indicates whether the user is using a device (0032).

8. The method of claim 1 wherein the state information indicates whether a device associated with the user is activated (0032).
11. The method of claim 1 wherein the service logic is active and therefore configured to cause the presence service to immediately react in a manner to control communications associated with the user (0041, 0071-0075).
12. The method of claim 1 wherein the service logic is passive and therefore configured to cause the presence service to react in a manner to control communications associated with the user upon the associated presence service reacting to a request bearing on communications with the user (0031, 0041).
13. The method of claim 1 further comprising executing the service logic at the associated presence service to control communications associated with the user (0041).
14. The method of claim 13 wherein the executing step further comprises controlling the communications associated with the user based on the service logic in response to an application attempting to communicate with the user (0041).

Claims 15-22, 25, and 26; and claims 27-34, 37, and 38 are rejected on the same bases as claims 1-8, 11, and 12 respectively, as the claims in question constitute a system and medium for the implementation of the method of claims 1-8, 11, and 12 respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 23, 24, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer in view of McDowell (2002/0035605).

As per claim 9, Boyer teaches the method of claim 1, but does not specifically teach the state information indicating whether the user is physically present in an area. McDowell teaches the use of a GPS system to locate whether a user is physically present in an area (paragraph 0010). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability to monitor a user's whereabouts, as taught by McDowell in the system of Boyer. The motivation for doing so lies in the fact that using a GPS system, in addition to the variety of methods to investigate the user's presence would add further diversity to Boyer's invention. Both inventions are from the same field of endeavor, namely the easy communication between users, utilizing a presence detection system.

As per claim 10, Boyer teaches the method of claim 1, but does not specifically teach the state information indicating whether the user is physically proximate to a device. McDowell teaches the use of a GPS system to locate whether a user is physically present in an area, and thus proximate to a device (paragraph 0010). It would have been obvious to one of ordinary skill

in the art at the time of the invention to include the ability to monitor a user's whereabouts, as taught by McDowell in the system of Boyer. The motivation for doing so lies in the fact that using a GPS system, in addition to the variety of methods to investigate the user's presence would add further diversity to Boyer's invention. Both inventions are from the same field of endeavor, namely the easy communication between users, utilizing a presence detection system.

Claims 23, 24, and 35, 36 are rejected on the same bases as claims 9 and 10, as the claims in question constitute a system and medium of implementing the method of claim 9 and 10 respectively.

(10) Response to Argument

Appellant argues that elements of the claimed invention are not taught by the Boyer reference. Examiner respectfully disagrees with this assertion.

Claim 1 reads as follows:

A method comprising: receiving state information bearing on presence of a user, wherein receiving occurs at at least one presence detection system; creating service logic based on the state information, the service logic created at the at least one presence detection system and configured to instruct an associated presence service to control communications associated with the user based on the presence of the user; and providing the service logic from the at least one presence detection system to the associated presence service to distribute generation of the service logic.

Boyer et al., in paragraphs 0032, 0040, 0041, and 0044 discusses the obtaining of user presence information. These teachings constitute the receiving of state information bearing on presence of a user. The indications of user activity and location may begin at the user's computer, for example, and are sent to the User Agent, which constitutes the receiving of the

presence information at a presence detection system, which creates service logic at the presence detection system. The system then enables a human client to communicate with the user through different methods. Through an application, the communication methods are controlled by the user's presence information. For example, if the user is away from his/her desk, and unavailable by computer, the system indicates communication through some other manner. This teaching constitutes the instruction of service logic from the presence system – to the presence service – which controls the communications between the human client and the user. The human client, through the application, may then communicate with the user, based on the user presence information. This constitutes the providing of service logic from the detection system to the presence service, which enables the distribution of service logic generation.

Specifically, Appellant argues that the generation of service logic does not take place at the presence detection system. It is argued that in Boyer, service logic is created at the SPFS, and that the “SPFS collects the presence information and generates the service logic that instructs the SLEE to control the communications associated with the user based on presence,” and that the SPFS is not part of the presence detection system.

Examiner agrees that service logic is generated at the SPFS. Even so, Boyer still teaches the claimed limitations. Appellant correctly interprets that presence detection takes place by the User Agent. Then, the SPFS collects the presence information and generates the service logic that instructs the SLEE to control the communications associated with the user based on presence. Appellant correctly states that the User Agent is part of the SPFS. Therefore, based on a broad reasonable interpretation, the User Agent and the SPFS constitute a presence detection system, as claimed. Appellant then claims that the service logic is distributed to an “associated

presence service,” to cause it to control communications between the human client and the user whose presence is detected. Appellant correctly states that Boyer’s SPFS (system) generates the service logic that instructs the SLEE to control communications. In controlling the communications, this service logic is distributed to the ConnectIcon View, TeamPortal View, etc., which are the applications that provide the interface through which the human client may communicate with the user. Service logic is sent to these applications, which control possible communication methods, based on the presence of the user. As such, these applications constitute the “associated presence service”, since they are associated with the user presence, and provide service to the human client – a broad reasonable interpretation. Therefore, Boyer teaches the invention as claimed.

As a result, in Boyer, the creation of service logic does take place at the system and instructs the service to control communications in the system, and distribution of the service logic takes place to achieve that end, since Boyer discloses the ability to perform the same tangible functions claimed by the Appellant.

Further, Appellant submits that there is no motivation to combine the teachings of Boyer and McDowell. Examiner respectfully disagrees, as both inventions attempt to solve a similar problem. Boyer’s invention highlights a system to effectively track fellow users and employs a method to best contact these users based on their respective locations. McDowell’s invention also employs a similar system to track fellow users to communicate with them effectively, where the use of GPS is a feature. Because Boyer and McDowell seek to solve the same problem, and because the use of GPS would add effectiveness to achieve the goal of Boyer’s invention, the combination of the features of the two inventions would have been obvious to one of ordinary

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skill in the art. The Boyer reference, in the Background and Summary (specifically paragraph 0004), discloses a need to enable immediate and seamless communications, based on the presence of a user. McDowell, in the Background and Summary (specifically paragraph 0013), also discloses an objective to enable instant communications based on user presence. Therefore, given that both inventions seek to solve exactly the same problem, one of ordinary skill in the art would have been motivated to include the teachings of McDowell into the system of Boyer. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment of obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But as long as it takes into account only knowledge, which was within the level of ordinary skill in the art at the time of the invention, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tanim M. Hossain

June 9, 2006

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